

Throttle position means any and all of the discrete output positions indicating the speed/tractive effort characteristic requested by the operator of the locomotive on which the throttle is installed. Together, the discrete output positions shall cover the entire range of possible speed/tractive effort characteristics. If the throttle has continuously variable segments, the event recorder shall capture either:

(1) The exact level of speed/tractive effort characteristic requested, on a scale of zero (0) to one hundred percent (100%) of the output variable or

(2) A value converted from a percentage to a comparable 0 to 8 digital signal.

Tier II means operating at speeds exceeding 125 mph but not exceeding 150 mph.

Time means either “time-of-day” or “elapsed time” (from an arbitrarily determined event) as determined by the manufacturer. In either case, the recorder must be able to convert to an accurate time-of-day with the time zone stated unless it is Greenwich mean time (UTC).

Toilet facility means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

Transfer service means a freight train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

Ultimate strength means the load at which a structural member fractures or ceases to resist any load.

Unsanitary means having any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited

to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove waste; visible human waste residue on the floor or toilet seat that is present due to a toilet that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Upper 99% confidence limit means the noise level below which 99% of all noise level measurements must lie.

Washing system means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

Wide-nose locomotive means a locomotive with a short hood that spans the full width of the locomotive.

[70 FR 37938, June 30, 2005, as amended at 71 FR 36911, June 28, 2006; 71 FR 47666, Aug. 17, 2006; 71 FR 61857, Oct. 19, 2006; 71 FR 63136, Oct. 27, 2006; 72 FR 59223, Oct. 19, 2007]

§ 229.7 Prohibited acts.

(a) The Locomotive Inspection Act (45 U.S.C. 22–34) makes it unlawful for any carrier to use or permit to be used on its line any locomotive unless the entire locomotive and its appurtenances—

(1) Are in proper condition and safe to operate in the service to which they are put, without unnecessary peril to life or limb; and

(2) Have been inspected and tested as required by this part.

(b) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor

providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or of the Locomotive Inspection Act or causes the violation of any such requirement is subject to a civil penalty of at least \$650 and not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy.

[45 FR 21109, Mar. 31, 1980, as amended at 53 FR 28601, July 28, 1988; 53 FR 52931, Dec. 29, 1988; 63 FR 11622, Mar. 10, 1998; 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007; 73 FR 79703, Dec. 30, 2008]

§ 229.9 Movement of non-complying locomotives.

(a) Except as provided in paragraphs (b), (c), § 229.125(g), and § 229.131(b) and (c)(1), a locomotive with one or more conditions not in compliance with this part may be moved only as a lite locomotive or a dead locomotive after the carrier has complied with the following:

(1) A qualified person shall determine—

(i) That it is safe to move the locomotive; and

(ii) The maximum speed and other restrictions necessary for safely conducting the movement;

(2)(i) The engineer in charge of the movement of the locomotive shall be notified in writing and inform all other crew members in the cab of the presence of the non-complying locomotive and the maximum speed and other restrictions determined under paragraph (a)(1)(ii) of this section.

(ii) A copy of the tag described in paragraph (a)(3) of this section may be used to provide the notification required by paragraph (a)(2)(i) of this section.

(3) A tag bearing the words “non-complying locomotive” and containing the following information, shall be securely attached to the control stand on each MU or control cab locomotive and to the isolation switch or near the engine start switch on every other type of locomotive—

(i) The locomotive number;

(ii) The name of the inspecting carrier;

(iii) The inspection location and date;

(iv) The nature of each defect;

(v) Movement restrictions, if any;

(vi) The destination; and

(vii) The signature of the person making the determinations required by this paragraph.

(b) A locomotive that develops a non-complying condition enroute may continue to utilize its propelling motors, if the requirements of paragraph (a) are otherwise fully met, until the earlier of—

(1) The next calendar day inspection, or

(2) The nearest forward point where the repairs necessary to bring it into compliance can be made.

(c) A non-complying locomotive may be moved lite or dead within a yard, at speeds not in excess of 10 miles per hour, without meeting the requirements of paragraph (a) of this section if the movement is solely for the purpose of repair. The carrier is responsible to insure that the movement may be safely made.

(d) A dead locomotive may not continue in use following a calendar day inspection as a controlling locomotive or at the head of a train or locomotive consist.

(e) A locomotive does not cease to be a locomotive because its propelling motor or motors are inoperative or because its control jumper cables are not connected.

(f) Nothing in this section authorizes the movement of a locomotive subject to a Special Notice for Repair unless the movement is made in accordance with the restrictions contained in the Special Notice.

(g) Paragraphs (a), (b), and (c) of this section shall not apply to sanitation conditions covered by §§ 229.137 and 229.139. Sections 229.137 and 229.139 set